



Attorney's Docket No. 043455/274252

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/802,367 Confirmation No.: 8322
Appellant(s): Michael Last
Filed: March 9, 2001
Art Unit: 2629
Examiner: MOONEYHAM, JANICE A.
Title: SYSTEM AND METHOD FOR POSTING AVAILABLE TIME
SLOTS TO A NETWORK HUB

Docket No.: 043455/274252
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REPLY BRIEF – 37 C.F.R. § 41.41

1. Introduction

This Reply Brief is filed pursuant to 37 C.F.R. § 41.41 to address the new grounds of rejection and the taking of Official Notice by the Examiner. This Reply Brief has been filed within two months of the Examiner's Answer as required by 37 C.F.R. § 41.41(a)(1). The Commissioner is hereby authorized to charge the Deposit Account No. 16-0605 for \$250 as required under 37 C.F.R. § 41.20(b)(2).

2. Facts Surrounding New Rejections, Arguments and References and Consideration of Appellant's Objective Evidence of Nonobviousness for the First Time on Appeal

Appellant filed this application for patent on March 9, 2001. After a lengthy prosecution, this appeal was filed. The relevant communications are addressed chronologically.

In the Office action dated November 17, 2004, the Examiner issued a final rejection of the claims pending in the application. In response to this rejection, on February 17, 2005, Appellant filed a Request for Continued Examination, cancelled all

claims pending in the application at that time (Claims 1-60), added new claims (Claims 61-70), and provided substantial, objective evidence of nonobviousness. In the subsequent Office action dated March 24, 2005, the Examiner issued a new section 102 rejection and failed to address the merit of Appellant's objective evidence of nonobviousness. Appellant responded to the Office action of March 24, 2005, in the communication dated June 24, 2005. After this, the Examiner issued another non-final rejection on October 7, 2005, this time relying upon a "Golf Agent" website combined with Official Notice and "general knowledge." Appellant then instituted this appeal.

In the Appeal Brief, Appellant noted that the Official Notice was improper. In the Examiner's Answer, the Examiner attempts to introduce six (6) new citations for the proposition for which Official Notice was taken.

Furthermore, in the Appeal Brief, Appellant noted that the "record is replete with objective evidence of nonobviousness *which has not been considered* or given due weight" (emphasis added, page 24 of Appeal Brief). In the Examiner's Answer, the Examiner addressed Appellant's objective evidence of nonobviousness for the first time. That is, the Examiner did not address this evidence in the subsequent Office action after it was submitted as the Examiner admits (pages 22-23 of the Examiner's Answer):

This objective evidence of nonobviousness is being considered by the Examiner for the first time in the Examiner's Answer. Appellant originally submitted the exhibits on February 17, 2005, wherein the appellant submitted both 131 and 132 affidavits/declarations The next Office Action mailed on March 25, 2005, was a non-final action [in which the arguments were not addressed because of a new rejection].

In response to the Examiner addressing Appellant's objective evidence of nonobviousness for the first time on appeal, Appellant was forced to file this Reply Brief and accompanying Petition to maintain the appeal.

2A. Requirements for a New Ground of Rejection in an Examiner's Answer

Although new grounds of rejection in an Examiner's Answer are permissible, they are envisioned to be rare. For an Examiner to enter a new ground of rejection, the Examiner must satisfy two requirements. See MPEP § 1207.03. First, the Examiner must obtain approval by a Technology Center Director or designee to enter a new ground of rejection. *Id.* Second, any new ground of rejection must be "prominently identified in the 'Grounds of Rejection to be Reviewed on Appeal' section and the 'Grounds of Rejection' section of the answer." *Id.* Moreover, section 1207.03 of the MPEP also states that "if an appellant has clearly set forth an argument in a previous reply during prosecution of the application and the examiner has failed to address that argument, the examiner would not be permitted to add a new ground of rejection in the examiner's answer to respond to that argument but would be permitted to reopen prosecution, if appropriate."

2B. Examiner's Failure to Comply with the Requirements for a New Ground of Rejection in an Examiner's Answer

The Examiner has failed to comply with the requirements for properly entering a new ground of rejection in an Examiner's Answer. The Examiner appears not to have obtained the permission of the Technical Center Director to add a new ground of rejection, as required under MPEP § 1207.03. On July 19, 2006, the undersigned spoke with Pamela Allen, assistant to Technical Center Director Wynn Wood Coggins, who could not confirm that the Examiner sought permission to add a new ground of rejection. Upon request to speak to the Technical Center Director, she instead referred the undersigned to the Examiner's Supervisor John Weiss, who also was not able to confirm that the Examiner had obtained permission from the Technical Center Director to add a new ground of rejection. On July 21, 2006, the undersigned spoke directly to the Examiner, who asked what the new ground or rejection or argument was, clearly indicating that she did not seek the Technical Center Director's approval to enter a new ground of rejection, argument or reference. In the Examiner's answer, there is no mention of obtaining the Technical Center Director's permission to add new grounds of rejection or to present additional arguments or references not made on the record.

Therefore, it appears the Examiner failed to comply with the requirements for entering such a new ground of rejection or to make new arguments or provide references not previously provided on the record for the first time on appeal. MPEP § 1207.03. Furthermore, the Examiner failed to identify the new grounds of rejection and arguments as such in the Examiner's Answer. *Id.* Moreover, the Examiner had ample opportunity to address Appellant's objective evidence of nonobviousness in the subsequent Office action after they were submitted, but she failed to do so. She should not be permitted to do so now on appeal as this would constitute piecemeal examination.

Section 716.01 of the MPEP states that "[e]vidence traversing rejections, when timely presented, must be considered[,] acknowledged and commented upon by the examiner in the next succeeding action." Additionally, section 1207.03 of the MPEP specifically states "if an appellant has clearly set forth an argument in a previous reply during prosecution of the application and the examiner has failed to address that argument, the examiner would not be permitted to add a new ground of rejection in the examiner's answer to respond to that argument but would be permitted to reopen prosecution, if appropriate." In this case, having had ample opportunity to address the objective evidence on nonobviousness during prosecution and having not done so, the Examiner should not be permitted to address this evidence through piecemeal examination and further delay rightful issuance of a patent on this application. [cite] In addressing Appellant's objective evidence of nonobviousness for the first time on appeal, the Examiner has placed Appellant at a procedural disadvantage. This is similar to what occurred in *Ex Parte Movva*. See generally, *Ex Parte Movva*, 1993 Pat. App. LEXIS 16, 31 USPQ2d 027, 1028 (Bd. Pat. App. & Interf. 1993). In *Ex Parte Movva*, the examiner cited four new references in the Examiner's Answer without officially entering a new ground of rejection. *Id.* Because the examiner's actions placed the appellants at a procedural disadvantage, the Board of Patent Appeals (hereinafter "BPAI") and Interferences ignored the new references in reviewing the examiner's rejections:

Since a new ground of rejection was not made, appellants were not entitled as a matter of right to respond to this new evidence of obviousness by way of amendment and/or evidence. Rather, appellants were limited to

presenting argument by way of a Reply Brief. The procedural disadvantage in which appellants were placed by the examiner's action is apparent. Accordingly, we have not considered the four references in determining the correctness of the rejection before us in this appeal. If in further prosecution of this subject matter, the examiner continues to find these references to be relevant evidence of obviousness . . . , a proper rejection should be made.

Likewise in this case, the Examiner's actions have placed Appellant at a procedural disadvantage. Because the Examiner failed to address the objective evidence of nonobviousness in the subsequent Office action after they were submitted, Appellant was forced to file a petition to have the new grounds of rejection identified as such and to respond to the rejection through this Reply Brief. Therefore, Appellant requests that the Examiner's comments be stricken from the record, or disregarded for purposes of deciding this Appeal.

3. Alleged Lack of Support in the Disclosure

On pages 11-12 of the Examiner's Answer, the Examiner asserts that Appellant defines the invention in a manner not disclosed in Appellant's original disclosure. Specifically, the Examiner states:

Appellant has provided no disclosure stating that the golfer need not "drill down" into specific web pages for a golf course, nor that the golfer need not be redirected to the golf course's website. At most, the appellant discloses that the golfer is not required to undertake an elaborate database query to "zero in" on a desired time. The Examiner asserts that there is no disclosure stating a golfer need not "drill down" into the specific web pages

Appellant's statements regarding "drill down" and "shot in the dark" website architectures were made to classify the alleged prior art provided by the Examiner, which are not the claimed invention (pages, 14, 22, 24, and 25 of Appeal Brief). The

Examiner's position is in essence that the Appellant's application must disclose what the invention is not, a proposition for which there is no binding authority and is contrary to 35 U.S.C. §112.

Moreover, this allegation is in essence a 35 U.S.C. §112, First or Second Paragraph rejection under the guise of an obviousness rejection, and as such constitute a new ground of rejection. Again, with respect to the new ground of rejection, the Examiner again failed to comply with the requirements for putting forth such a new ground. Specifically, it appears as though the Examiner failed to obtain approval by a Technology Center Director or designee to enter a new ground of rejection. And clearly, the Examiner failed to prominently identify the new ground of rejection in the "Grounds of Rejection to be Reviewed on Appeal" section and the "Grounds of Rejection" section of the answer. *See* MPEP § 1207.03. The appropriate remedy is to strike the Examiner's comments from the record, or alternatively, to disregard them for purposes of deciding this Appeal.

4. The Taking of Official Notice

4A. Standard Required in Taking Official Notice

Under the MPEP, Official Notice unsupported by documentary evidence should only be taken if the facts asserted to be well-known "are capable of instant and unquestionable demonstration as being well-known." *See e.g.*, MPEP § 2144.03; *In re Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). If Official Notice is taken without supporting documentary evidence, the applicant must "be presented with the explicit basis on which the examiner regards the matter as subject to Official Notice and be allowed to challenge the assertion in the next reply" If the applicant adequately traverses the examiner's assertion of Official Notice, the examiner must provide *supporting* documentary evidence in the next Office action if the rejection is to be maintained.

4B. The Examiner's Improper Taking of Official Notice

In the non-final rejection dated October 7, 2005, the Examiner attempted to take Official Notice (pages 3-4 of Office action dated October 7, 2005) that "it is old and well known to display multiple reservations times from a plurality of entities on a single page. Specifically, the Examiner noted:

GolfAgent does not explicitly disclose that the multiple tee times at a *plurality of golf courses* are generated on a single web page. However, the Examiner takes Official Notice that it is old and well-known to display multiple reservations times from a plurality of entities on a single page. For example, in the travel industry, when one is shopping for an airline reservation and/or hotel reservation or a vehicle rental reservation, the user generally enters the dates that the reservations are needed and a webpage is generated and displayed to the user listing multiple airline carriers and/or hotels from different chains and/or vehicles available for rent at various companies that are available on those dates.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the golf reservation method of GolfAgent which is used to book tee times at a wide range of golf courses as a matter of convenience for the user so that the user can view all the courses in that area having available tee times on the dates you require.

Appellant challenged and traversed this attempt to take Official Notice in the Appeal Brief dated May 20, 2006 (pages 10, 15-16 of Appeal Brief). In the Appeal Brief, Appellant challenged the Examiner's assertions as not being "capable of instant and unquestionable demonstration as being well-known." Thus, the taking of Official Notice was defective *ab initio*; Examiner should have cited the references now cited in the Examiner's Answer in the first instance rather than to attempt Official Notice and engage in piecemeal examination.

Moreover, Appellant cited the record for substantial, credible evidence of objective evidence of nonobviousness demonstrating that “generating a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date” was not well known in the art at the time of the invention. This objective evidence of nonobviousness was provided to the Examiner on February 17, 2005, but the Examiner did not consider such evidence in the following Office action, instead attempting to address it for the first time on appeal.

In response to the Appeal Brief, the Examiner’s Answer attempted to provide documentation of the Examiner’s assertions regarding the taking of Official Notice. However, none of the documents provided by the Examiner discloses what is claimed in the present invention. Similarly, none of the references provided by the Examiner specifically discloses what the Examiner suggests: displaying “multiple reservations times from a plurality of entities on a single page.” Each alleged prior art reference is addressed in turn.

Tagawa (U.S. Patent No. 5,732,398) discloses displaying all available airline carriers for selection by a user at a self-service kiosk (Col. 4, lines 5-24; Col. 5, lines 17-31; Col. 6, lines 34-38; Col. 9, lines 34-38). However, it does not disclose displaying multiple times for each of those carriers on a single page. Thus, Tagawa does not disclose displaying “multiple reservations times from a plurality of entities on a single page.” Moreover, Tagawa is not relevant art as it relates to booking travel at a kiosk, a field of endeavor not related to the present invention.

Keller et al. (U.S. Patent No. 6,304,850) discloses an invention for purchasing an airline ticket. (Col. 2, line 52 through Col 3, line 56). Specifically, it notes that the invention “receives a return itinerary representing the results of the search.” It does not further define the “results of the search.” Thus, it does not support the proposition asserted. That is, Keller et al. does not disclose “multiple reservations times from a plurality of entities on a single page.”

Daughtrey (U.S. Patent No. 6,801,226) issued as a patent on October 5, 2004 and was filed on November 1, 1999. In Appellant’s communication dated February 17, 2005, Appellant swore back to October 6, 1999: “I believe I conceived of the claimed invention

before October 6, 1999” (page 5 of Michael Last’s Declaration). Accordingly, Daughtrey is not prior art. Furthermore it does not disclose the proposition asserted.

Figure 2b, as asserted in the Examiner’s Answer, of Jones et al. (U.S. Publication No. 2002/0156661) does not disclose “multiple reservations times from a plurality of entities on a single page.” Rather, Fig. 2b provides an input interface for a “goal seeker.” The reference does, though, disclose displaying multiple carriers on a single page. But this disclosure does not include multiple reservation times from each of those carriers being displayed on a single page. Therefore, it does not support the asserted proposition.

And finally, Figures 14F-14G, 14I-14J, and 14L-14M of Vance et al. (U.S. Patent No. 6,442,526) disclose displaying multiple carriers with only *one* carrier displaying multiple reservation times on a single page. This is not the asserted proposition. The asserted proposition is that it discloses displaying “multiple reservations times from a plurality of entities on a single page,” which it does not.

It should also be noted that even *assuming* the alleged prior art references were capable of performing the function the Examiner alleges, they certainly do not disclose it. Thus, the Examiner cannot rely on them to support her attempts to take Official Notice. Additionally, because Appellant has adequately traversed and challenged the Examiner’s attempts to take Official Notice and the Examiner was unable to provide documentary evidence specifically supporting the Examiner’s assertions, the taking of Official Notice cannot be maintained.

Furthermore, as Appellant has clearly demonstrated, one of ordinary skill in the art at the time the invention was made would have appreciated the novelty and nonobviousness of the present invention as established by the objective evidence of nonobviousness. The objective evidence of nonobviousness not only demonstrates nonobviousness, but it also serves to refute the Examiner’s assertions in her attempts to take Official Notice. The objective evidence of nonobviousness provided include significant evidence of commercial success, long-felt need in the art, acclaim for the invention by experts, failed attempts by others, copying, and unexpected results. Each exhibit in the objective evidence of nonobviousness, considered alone or in combination, demonstrates the nonobviousness and novelty of the present invention and further establishes that it would be improper to take Official Notice as the Examiner has done.

Portions of the objective evidence of nonobviousness are reproduced here for convenience.

4A. Commercial Success

Mr. Michael Last (hereinafter “Mr. Last”) makes clear that the growth in the use of the Last Minute Tee Times (hereinafter “LMTT”) system has been staggering in terms of use by golfers and golf courses, and its financial success is manifest, due in large part to use of the methods of Claims 61-67. Exhibit 1, Paragraphs 39-45.

Mr. Joseph Ferguson (hereinafter “Mr. Ferguson”) testifies that he appreciated the value of LMTT system in providing a golfer web interface listing multiple tee times, but less than all tee times for the entire golf day, for each of multiple golf courses on a single web page, so much so he considered investing in the company. Exhibit 3, Paragraphs 2-3.

Mr. Carl Danbury (hereinafter “Mr. Danbury”) indicates that dozens of golfers who play in his numerous golfing events each year comment on using the LMTT website to reserve tee times and appreciate the convenience it provides through the booking interface. Exhibit 4, Paragraph 5.

Mr. Brandy Jones (“hereinafter “Mr. Jones”) testifies that golfers who reserve tee times at the LMTT website to play golf at his golf course routinely comment on how easy the LMTT website is to use due to its simplified golfer interface, and, that in his own experience, use of the golf course interface has been easy. Exhibit 5, Paragraph 5 – 6.

An article published May 2000 in Golf News—Georgia’s Golf Newspaper—describes the significant growth of golfers and golf course users using the LMTT website and their appreciation of its benefits. Exhibit 6.

An article published in Atlanta Catalyst magazine explains some of the benefits of the LMTT website that have led to its commercial success. Exhibit 7.

4B. Long-Felt Need in the Art

Mr. Last notes that golfers recall the difficulties of reserving tee times back in 1999, and the substantial improvement LMTT’s system was over the way in which the majority of tee times were then made. Exhibit 1, Paragraphs 46-51.

Mr. Ferguson testifies that his research in early to mid 2000, when he was considering making an investment in LMTT, indicated that other websites did not have the LMTT system's golfer web interface listing multiple tee times, but less than all tee times for the entire golf day, for each of multiple golf courses on a single web page. He appreciated, then, the value of this golfer web interface over others that had existed at that time. Exhibit 3, Paragraph 2-6.

Mr. Danbury testifies that he looked at similar tee time services in early 2000, but could find none that compared with LMTT's booking page and interface for the consumer, and was so intrigued that he invested in LMTT. Exhibit 4, Paragraph 3-4.

Mr. Jones testifies that in his seven years in golf, LMTT was the first to provide a golfer interface via the Internet listing multiple tee times at each of multiple golf courses without listing the entire tee sheet of the golf course. Exhibit 5, Paragraph 3-4.

4C. Acclaim for the Invention by Experts

Mr. Last explains that after years of frustration, through the LMTT website, he can look at available tee times at over 40 different courses in one screen shot. Exhibit 1, Paragraph 52.

Carl Danbury indicates that he was so impressed with the service and website booking module of LMTT, that he decided to profile his service and company for the first issue of Points North magazine. Exhibit 4, Paragraphs 2 and 5.

Mr. Jones testifies that golfers he encounters routinely comment on the ease of use of the LMTT website, and further testifies that as a golf course user using the LMTT interface to post tee times to the hub server, the LMTT interface is easy to use. Exhibit 5, Paragraphs 5 and 6.

4D. Failed Attempts of Others

Mr. Last testifies that websites attempting to put the entire tee sheet of a golf course on their websites go out of business due to golfer frustration in using such websites. Exhibit 1, Paragraphs 53 and 54. Furthermore, Mr. Last testifies that most of the original tee time reservation websites from 1999 have now gone out of business or

have been acquired for relatively little, and of those that remain, most have abandoned their old approaches and copied the LMTT website and claimed methods.

Mr. Jones testifies that in his experience, golf websites that are single golf course websites, or that list the entire tee sheet of a golf course, or that require a complex search on the part of the golfer, usually fail by employing these strategies. Exhibit 5, Paragraph 7.

4E. Copying

Mr. Last testifies to the extensive copying of the claimed methods, in many cases with direct evidence of copying of these methods from the LMTT website by others. (Exhibit 1, Paragraphs 55-71). By copying the claimed features of the LMTT website, it is evident that the copyists have learned to appreciate the merit of the claimed methods, and the commercial success attainable with them.

4F. Unexpected Results

Mr. Last notes that most would view it counterintuitive not to provide the golfer with all possible choices for tee times in which the golfer may be interested. In fact, this approach has proven fatal to many tee time reservation websites. Mr. Last testifies that contrary to popular thinking, the counterintuitive approach of limiting the amount of tee times per course, but including multiple courses to choose from, is a key to success, producing results unexpected by many who operate websites in this industry. Exhibit 1, Paragraph 72.

Each exhibit provided as a secondary consideration, either alone or in combination, demonstrates that Appellant's invention was not obvious at the time it was made. As mentioned in the Appeal Brief and clearly admitted by the Examiner, the Golf Agent website does not disclose listing multiple tee times at a plurality of golf courses on a single web page. The Examiner *cannot* discredit this glaring difference in the present invention by casually taking Official Notice of the difference, especially when her assertions are unsupported by the documentary evidence provided. This form of taking Official Notice contravenes both the spirit and letter of a proper obviousness determination under 35 U.S.C. §103(a). Moreover, each exhibit provided as a secondary

consideration disproves the Examiner's assertions she made in attempting to take Official Notice. Thus, the Examiner's taking of Official Notice is not supported by the documentation provided and does not render the claimed invention obvious.

The Examiner's obviousness analysis was further skewed by engaging in classic claim dissection. The Examiner's piecemeal approach of dissecting the claims does not adequately consider the claims "as a whole" as required under 35 U.S.C. 103(a). See *Diamond v. Diehr*, 450 U.S. 175, 176 (1981) (noting that claims must be considered as a whole, it being inappropriate to dissect the claims into old and new elements and then to ignore the presence of the old elements in the analysis); *Princeton Biochemicals, Inc., Beckman Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed. Cir. 2005) (holding that section 103 specifically requires consideration of the claimed invention as a whole; without this important requirement, an obviousness assessment might successfully break an invention into its component parts and then find a prior art reference corresponding to each component). The "as a whole" evaluation requires a showing that an artisan of ordinary skill in the art at the time of invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner. *Princeton* at 1337. With respect to the present invention, those of ordinary skill in the art at the time the invention was made would have found it counterintuitive not to provide the golfer with all possible choices for tee times. Thus, by dissecting the claims into their component parts and by providing an alleged prior art reference that purportedly contains a particular limitation of one element, the Examiner has imported hindsight into the obviousness determination. This dissection of claim language, as previously noted, has been held improper by numerous BPAI and Federal Circuit decisions. Thus, Appellant respectfully requests reversal of the rejection of Claims 61-67 under 35 U.S.C. 103(a).

5. Consideration of Other Claims

The Golf Agent Website Teaches Away from the Proposition for which Official Notice is taken, as well as the Claimed Invention

The Golf Agent website is a "drill down" website architecture in which the golfer must select a particular golf course on a map, then input a date range for that golf course

only to find out whether a tee time is available, which is a “shot in the dark” approach. There is simply no way that the Golf Agent website can be used for:

generating a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, the multiple tee times indicated as available for each golf course for a date being a subset of all of the tee times at the golf course for the date

as recited in Claim 61. One cannot simultaneously query available reservation times at multiple golf courses to generate a single web page listing multiple tee times available at a plurality of golf courses for reservation by golfers, as claimed in Claim 1, using the Golf Agent website. Instead, one can only use Golf Agent to query a single golf course at a time. The Examiner admits to this deficiency of the Golf Agent website:

GolfAgent does not explicitly disclose that the multiple tee times at a *plurality of golf courses* are generated on a single web page. Office Action dated October 17, 2005.

Nonetheless, the Examiner in effect states that the Examiner takes Official Notice that it is old and well-known to display multiple reservations times from a plurality of entities on a single page, and combines Official Notice with the Golf Agent website despite the fact that the Golf Agent architecture and the proposition for which Official Notice is taken are directly opposed to one another. The Golf Agent’s “drill down” architecture requires navigation to query a single golf course for available tee times. Golf Agent is incapable of generating a single web page listing multiple tee times available at a plurality of golf courses, and in fact “teaches away” from it. The person of ordinary skill in the art would not have been in any sense motivated to combine it with the proposition for which Official Notice is taken, namely, that it is old and well-known to display multiple reservations times from a plurality of entities on a single page. The Examiner cannot combine alleged references when to do so would vitiate their express teachings or contradict their disclosure. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*,

721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959); *Ex Parte Herbert M. Cullis*, 189 Pat. App. LEXIS 6, 8-9; 11 U.S.P.Q.2d 1876 (B.P.A.I. 1989); *Ex Parte The Goodyear Tire and Rubber Co.*, 1985 Pat. App. LEXIS 1, 5-10, 230 U.S.P.Q. 357 (B.P.A.I. 1985); *Ex parte Giles*, 1985 Pat. App. LEXIS 39; 228 U.S.P.Q. 866 (B.P.A.I. 1985).

Claim 62 recites “retrieving the available tee times from the database for use in the generating the single web page.” As noted above, Golf Agent does not disclose generating the single web page of Claim 61, at least the retrieving step of Claim 62 is also not disclosed.

Claim 65 recites “wherein the listing of the multiple available tee times are next-day tee times for respective golf courses.” Golf Agent and the Official Notice and citations made in alleged support thereof fail to disclose this limitation.

Claim 66 recites “wherein the request designates a specific geographic region and the single web page is generated to list available tee times for only the golf courses in the specific geographic region.” Golf Agent is the opposite, one selects a single golf course within a geographic region, then requires the golfer to query that single golf course for tee times.

Claim 67 recites “wherein the request includes a date on which the golfer desires to play but does not require the golfer to specify the golfer’s desired time of play in order to generate a list of available tee times.” Golf Agent requires entry of a range of dates, and thus no single date is entered.

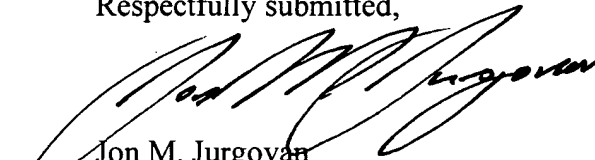
Thus, for at least the foregoing reasons, the combination of Golf Agent and Official Notice and the citations made in alleged support thereof fail to obtain the claimed invention. Claims 61-67 are therefore patentable for at least the foregoing reasons.

CONCLUSION

Because the Examiner failed to satisfy the requirements for entering a new ground of rejection and failed to seasonably address the merit of Appellant's objective evidence of nonobviousness, Appellant respectfully requests that the Examiner's remarks considered in this brief be stricken from the record, or, in the alternative, be identified as a new ground of rejection. Furthermore, Appellant hereby requests reversal of the rejection of Claims 61-67 under 35 U.S.C. 103(a) with instructions on remand to promptly issue a Notice of Allowance for all pending Claims.

Please charge any fee deficiency and credit any overpayment in connection with the filing of this Reply Brief to our Deposit Account No. 16-0605.

Respectfully submitted,




Jon M. Jurgovan
Registration No. 34,633

CUSTOMER NO. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Atlanta Office (404) 881-7000
Fax Atlanta Office (404) 881-7777

"Express Mail" mailing label number EV 653456080 US
Date of Deposit July 21, 2006

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Shelley Victoria